

HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

SOPHEARY SANH,

NO. 2:20-cv-00310

Plaintiff,

MOTION TO AMEND

v.

NOTING DATE: FEBRUARY 19, 2021

OPPORTUNITY FINANCIAL, LLC,
APPLIED DATA FINANCE, LLC d/b/a
PERSONIFY FINANCIAL, and RISE
CREDIT SERVICE OF TEXAS, LLC d/b/a
RISE,

Defendants.

I. RELIEF REQUESTED

Plaintiff Sopheary Sanh moves the Court for an order permitting her to amend the complaint to add Elevate Credit, the parent entity of Defendant RISE Credit Service of Texas, LLC, and to narrow the scope of the Consumer Protection Act claims at issue. This motion is made pursuant to the Court's order permitting Ms. Sanh to seek amendment in the event an amended pleading could address the deficiencies identified in the Court's ruling. See Dkt. No. 49 at 8.

The proposed amended pleading responds to the Court's order and specifically, the statement, “[t]he problem is not with Plaintiff's 'real lender' or 'real party in interest' theory of liability, but with the allegations of the complaint. At no point does plaintiff

1 allege, even in a conclusory fashion, that RISE was the lender in her transactions.” *Id.*
 2 at 6.

3 Following entry of the Court’s order, Plaintiff obtained additional information to
 4 support the theory advanced in her briefing, *viz.*, that RISE’s parent, Elevate Credit, was
 5 the true lender in the loan at issue and that Elevate used other entities, including RISE
 6 Credit Services of Texas, LLC and FinWise Bank to deceive consumers, courts, and
 7 regulators into which entity controlled the loans at issue. The ‘rent-a-bank’ scheme
 8 perpetuated by Elevate has been subject to increasing scrutiny, including the
 9 Washington D.C. Attorney General and Wall Street Journal. Based in part on
 10 information recently obtained by Ms. Sanh’s counsel, and as detailed in the amended
 11 pleading, Ms. Sanh alleges that Elevate is the “true lender” of the loan. The pleading
 12 also alleges that Elevate’s subsidiary, RISE Credit Services of Texas, LLC, provided
 13 necessary support to its parent to effectuate the ‘rent-a-bank’ scheme.
 14

16 II. FACTS

17 Plaintiff Sopheary Sanh left college with substantial student loans and medical
 18 debt, resulting in a Chapter 7 bankruptcy.¹ After her bankruptcy discharge, Elevate
 19 Credit, Inc., with support from its subsidiary RISE and/or RISE Credit Service of Texas,
 20 LLC, targeted Ms. Sanh with mail solicitations at her home in South Seattle. Elevate
 21 sent at least three solicitations to Ms. Sanh, stating that she was preapproved or
 22 prequalified for a loan as soon as “tomorrow,” but these solicitations did not disclose the
 23 outrageous interest rate and true costs.
 24

25
 26 ¹ Unless explicitly stated otherwise, the facts herein are based on the allegations contained in Ms. Sanh’s
 27 proposed amended pleading, attached hereto. See Declaration of Brendan W. Donckers at **Ex. 1**
 (Proposed Amended Complaint).

1 Ms. Sanh was given a \$3,000 loan that accrued interest at 149.09%, costing her
2 \$9,666.08. Although the 149.09% interest rate on Ms. Sanh's loan vastly exceeds what
3 is permitted under Washington's usury law, Elevate attempted to evade application of
4 state law by entering into an agreement with FinWise, a state-chartered bank in Utah.
5 However, despite FinWise's name on the loan documents, Elevate controlled the
6 process, used another entity it owns, EF SPV, Ltd., to fund the loan, derived the most
7 economic benefit from loan, and owns a 95 percent interest in the loan. Elevate used
8 this 'rent-a-bank' scheme to target financially vulnerable consumers like Ms. Sanh
9 across Washington. Instead of providing a financial lifeline, these loans and the scheme
10 deployed to originate them, are catalyst to a never-ending debt cycle that has largely
11 eluded scrutiny.

13 But as detailed in the proposed amended pleading, this is beginning to change,
14 as states, attorneys general, and media have begun to unveil how Elevate has
15 perpetuated this scheme and caused harm to consumers across the country, including
16 thousands of Washingtonians. The proposed amended pleading provides the detail Ms.
17 Sanh currently has, based on documents that were published *after* Ms. Sanh filed the
18 original complaint.

20 No prejudice will result because the case has barely begun. Although Plaintiff
21 requested discovery from Elevate's subsidiary, RISE Credit Service of Texas, RISE
22 refused to produce much of what was requested. RISE, in fact, produced only limited
23 information that supported its self-serving theory of the case and, in its brief to the Court,
24 contended that it was the wrong party because it was merely doing business under its
25 parent company, Elevate. Dkt. No. 43 at 5 (citing RISE's corporate disclosure statement
26 parent company, Elevate. Dkt. No. 43 at 5 (citing RISE's corporate disclosure statement
27

1 and Elevate's 10-K Statement for 2017, and various other documents identifying
 2 Elevate). Accordingly, the amended pleading proposes to add RISE's parent, Elevate.

3 III. AUTHORITY

4 Under Fed. R. Civ. P. 15(a)(2), courts "should freely give leave [to amend] when
 5 justice so requires." Freely granting leave "when justice so requires," is "to be applied
 6 with *extreme liberality.*" *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051
 7 (9th Cir. 2003) (italics added).

8 In considering a motion to amend, courts evaluate several factors set forth in
 9 *Forman v. Davis*, 371 U.S. 178, 182 (1962), including "undue delay, bad faith or dilatory
 10 motive on the part of the movant, repeated failure to cure deficiencies by amendments
 11 previously allowed, undue prejudice to the opposing party by virtue of allowance of the
 12 amendment, [and] futility of amendment[.]" The consideration of prejudice to the non-
 13 moving party carries the most weight. *Eminence*, 316 F.3d at 1052.

14 If a court does not find prejudice or a "strong showing" of the *Forman* factors,
 15 there is a "presumption" under Rule 15(a) in favor of granting leave to amend. *Id.*
 16 Prejudice must be substantial for leave to be denied. *Morongo Band of Mission Indians*
 17 *v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990).

18 None of the *Forman* factors apply here and there is no prejudice to Elevate at this
 19 early stage in the litigation. Indeed, RISE asserted that Elevate, as its parent company,
 20 is the proper party to provide relief to Ms. Sanh's claims. Dkt. No. 43 at 5. While Plaintiff
 21 served targeted discovery on RISE, it did not substantively respond and no discovery
 22 has been undertaken by either entity from Ms. Sanh. There has been no delay in
 23 bringing this motion. To the contrary, the motion is consistent with the Court's order
 24 allowing her to do so and brought within the timeframe set therein. See Dkt. No. 49 at
 25 8. The proposed pleading is based largely on sources that only became available
 26 months after the original complaint was filed.

1 **IV. CONCLUSION**
2

3 For the forgoing reasons, Ms. Sanh respectfully requests permission to file
4 the proposed First Amended Complaint attached to the declaration of her
counsel.

5 DATED: January 25, 2021.
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